

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

Midwest Diversified Development Corporation)
d/b/a Cherry Creek Apartments)
Manchester, Missouri)

Docket No. TSCA-07-2004-0040

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Midwest Diversified Development Corporation (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-*

Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos, Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Midwest Diversified Development Corporation, 23123 South State Road 7, Boca Raton, Florida 33428.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act"), 42 U.S.C. §§ 4851-56, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 through 412, 15 U.S.C. §§ 2681-92. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The regulations, issued on March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; and

e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and of Section 409 of TSCA.

Alleged Violations

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Allegations Pertaining to All Counts

7. Respondent is a Missouri corporation.
8. Respondent does business as Cherry Creek Apartments.
9. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Oak Spur Hills Apartments Associates, L.L.C. to represent it for the purpose of leasing the residential property Oak Spur Hills Apartments Associates, L.L.C. owns, known as Cherry Creek Apartments, located at 240 Hickory Hedge Drive, Manchester, Missouri, 63021.
10. The property referenced above was constructed prior to 1978.
11. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103 because the property is housing constructed before 1978.

Count I - Failure to Provide Pamphlet
310 Oak Moss Walk Contract

12. Records collected from Respondent show that Respondent entered into a contract to lease the unit of the property known as 310 Moss Oak Walk on or about April 4, 2002.

13. Records collected from Respondent show that Respondent failed to provide the lessees of 310 Moss Oak Walk with an EPA-approved lead hazard information pamphlet before the lessees were obligated under a contract to lease target housing.

14. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count II - Failure to Provide Pamphlet
275-B Hickory Hedge Drive Contract

15. Records collected from Respondent show that Respondent entered into a contract to lease the unit of the property known as 275-B Hickory Hedge Drive on or about September 30, 2001.

16. Records collected from Respondent show that Respondent failed to provide the lessees of 275-B Hickory Hedge Drive with an EPA-approved lead hazard information pamphlet before the lessees were obligated under a contract to lease target housing.

17. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and neither admits nor denies the factual allegations set forth above.
2. Respondent waives its right to contest the allegations set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.
5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Fifteen Thousand Four Hundred Dollars (\$15,400) to be paid within thirty (30) days of the effective date of the Final Order.
6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of Fifteen Thousand Four Hundred Dollars (\$15,400) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Attorney
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
MIDWEST DIVERSIFIED DEVELOPMENT
CORPORATION

Date: 11/30/03

By: [Signature]

VERA Scheller
Printed Name

Title: Vice President

COMPLAINANT
ENVIRONMENTAL PROTECTION AGENCY

Date: December 9, 2003

By: [Signature]
Lynn Slagantz, Acting Chief
Radiation, Asbestos, Lead and
Indoor Programs Branch

Date: December 8, 2003

By: [Signature]
Mike Gieryic, Attorney
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: December 24, 2003

[Signature]
ROBERT L. PATRICK
Regional Judicial Officer
EPA, Region 7

IN THE MATTER OF Midwest Diversified Development Corporation d/b/a Cherry Creek Apartments,
Respondent
Docket No. TSCA-07-2004-0040

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Harriet F. Francis, Esq.
Van Matre and Harrison, P.C.
1103 E. Broadway, Suite 101
Columbia, Missouri 65201

Dated: 12/24/03


Kathy Robinson
Regional Hearing Clerk